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HOUSE BILL 3

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003

INTRODUCED BY

W. Ken Martinez

FOR THE CORRECTIONS OVERSIGHT AND JUSTICE COMMITTEE

AN ACT

**RELATING TO SEXUAL OFFENDERS; PROVIDING THAT A SEX OFFENDER MAY
BE PLACED ON PROBATION FOR A PERIOD OF UP TO TWENTY YEARS;
ESTABLISHING FACTORS FOR THE DISTRICT COURT TO CONSIDER WHEN
DETERMINING THE DURATION, TERMS AND CONDITIONS OF PROBATION;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-17, as amended) is amended to read:**

"31-20-5. PLACING DEFENDANT ON PROBATION. --

**A. When a person has been convicted of a crime for
which a sentence of imprisonment is authorized and when the
magistrate, metropolitan or district court has deferred or
suspended sentence, it shall order the defendant to be placed
on probation for all or some portion of the period of deferment**

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underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 or suspension if the defendant is in need of supervision,
2 guidance or direction that is feasible for the [~~field services~~
3 ~~division of the~~] corrections department to furnish [~~provided,~~
4 ~~however~~]. Except for sex offenders as provided in Section
5 31-20-5.2 NMSA 1978, the total period of probation for district
6 court shall not exceed five years and the total period of
7 probation for the magistrate or metropolitan courts shall be no
8 longer than the maximum allowable incarceration time for the
9 offense or as otherwise provided by law.

10 B. If a defendant is required to serve a period of
11 probation subsequent to a period of incarceration:

12 (1) the period of probation shall be served
13 subsequent to any required period of parole, with the time
14 served on parole credited as time served on the period of
15 probation and the conditions of probation imposed by the court
16 deemed as additional conditions of parole; and

17 (2) in the event that the defendant violates
18 any condition of that parole, the parole board shall cause him
19 to be brought before it pursuant to the provisions of Section
20 31-21-14 NMSA 1978 and may make any disposition authorized
21 pursuant to that section and, if parole is revoked, the period
22 of parole served in the custody of a correctional facility
23 shall not be credited as time served on probation. "

24 Section 2. A new section, Section 31-20-5.2 NMSA 1978, is
25 enacted to read:

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1 "31-20-5.2. [NEW MATERIAL] SEX OFFENDERS-- PERIOD OF
2 PROBATION-- TERMS AND CONDITIONS OF PROBATION. --

3 A. Prior to placing a sex offender on probation,
4 the district court shall conduct a hearing to determine the
5 duration, terms and conditions of probation for the sex
6 offender. A sex offender's initial period of probation shall
7 be for a period of five years, but the district court may
8 extend the period of probation in five-year increments for a
9 total period of up to twenty years. The district court may
10 consider any relevant factors, including:

11 (1) the nature and circumstances of the
12 offense for which the sex offender was convicted or
13 adjudicated;

14 (2) the nature and circumstances of a prior
15 sex offense committed by the sex offender;

16 (3) rehabilitation efforts engaged in by the
17 sex offender, including participation in treatment programs
18 while incarcerated or elsewhere;

19 (4) the danger to the community posed by the
20 sex offender; and

21 (5) a risk and needs assessment regarding the
22 sex offender, prepared by the sex offender management board of
23 the New Mexico sentencing commission or another appropriate
24 entity.

25 B. The district court shall review the terms and

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1 conditions of a sex offender's probation at two and one-half
2 year intervals. During a review hearing, the state shall bear
3 the burden of proving to the district court that a sex offender
4 should remain on probation. The district court may decide to
5 continue a sex offender's probation, but may determine that
6 certain terms and conditions of probation are no longer
7 necessary.

8 C. The district court may order a sex offender
9 placed on probation to abide by reasonable terms and conditions
10 of probation, including:

11 (1) being subject to intensive supervision by
12 a probation officer of the corrections department;

13 (2) participating in an outpatient or
14 inpatient sex offender treatment program;

15 (3) a probationary agreement by the sex
16 offender not to use alcohol or drugs;

17 (4) a probationary agreement by the sex
18 offender not to have contact with certain persons or classes of
19 persons; and

20 (5) being subject to alcohol testing, drug
21 testing or polygraph examinations used to determine if the sex
22 offender is in compliance with the terms and conditions of his
23 parole.

24 D. The district court shall notify the sex
25 offender's counsel of record of an upcoming probation hearing

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1 for a sex offender, and the sex offender's counsel of record
2 shall represent the sex offender at the probation hearing.
3 When a sex offender's counsel of record provides the court with
4 good cause that the counsel of record should not represent the
5 sex offender at the probation hearing and the sex offender is
6 subsequently unable to obtain counsel, the district court shall
7 notify the chief public defender of the upcoming probation
8 hearing and the chief public defender shall make representation
9 available to the sex offender at that hearing.

10 E. If the district court finds that a sex offender
11 has violated the terms and conditions of his probation, the
12 district court may revoke his probation or may order additional
13 terms and conditions of probation.

14 F. As used in this section, "sex offender" means a
15 person who is convicted of, pleads guilty to or pleads nolo
16 contendere to any one of the following offenses:

17 (1) criminal sexual penetration in the first,
18 second or third degree, as provided in Section 30-9-11 NMSA
19 1978;

20 (2) criminal sexual contact of a minor in the
21 third degree, as provided in Section 30-9-13 NMSA 1978; or

22 (3) sexual exploitation of children in the
23 second degree, as provided in Section 30-6A-3 NMSA 1978. "